



## PERSONAL SERVICE CONTRACT

DSHS Contract Number:

Resulting From Procurement Number:

This Contract is between the state of Washington Department of Social and Health Services (DSHS) and the Contractor identified below, and is governed by chapter 39.29 RCW.

Program Contract Number:

Contractor Contract Number:

CONTRACTOR NAME		CONTRACTOR doing business as (DBA)	
CONTRACTOR ADDRESS		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)	DSHS INDEX NUMBER
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR FAX	CONTRACTOR E-MAIL ADDRESS
DSHS ADMINISTRATION	DSHS DIVISION	DSHS CONTRACT CODE	
DSHS CONTACT NAME AND TITLE		DSHS CONTACT ADDRESS	
DSHS CONTACT TELEPHONE	DSHS CONTACT FAX	DSHS CONTACT E-MAIL ADDRESS	
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT?		CFDA NUMBER(S)	
CONTRACT START DATE	CONTRACT END DATE	CONTRACT MAXIMUM AMOUNT	
<b>EXHIBITS. The following Exhibits are attached and are incorporated into this Contract by reference:</b> <input type="checkbox"/> Exhibits (specify): <input type="checkbox"/> No Exhibits.			
The terms and conditions of this Contract are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below represent that they have read and understand this Contract, and have the authority to execute this Contract. This Contract shall be binding on DSHS only upon signature by DSHS.			
CONTRACTOR SIGNATURE		PRINTED NAME AND TITLE	DATE SIGNED
DSHS SIGNATURE		PRINTED NAME AND TITLE	DATE SIGNED

## DSHS General Terms and Conditions

1. **Definitions.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
  - a. "Central Contract Services" means the DSHS central headquarters contracting office, or successor section or office.
  - b. "Contract" means the entire written agreement between DSHS and the Contractor, including any Exhibits, documents, and materials incorporated by reference.
  - c. "Contracts Administrator" means the manager, or successor, of Central Contract Services or successor section or office.
  - d. "Contractor" means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents. The Contractor for this contract is: .
  - e. "Debarment" means an action taken by a Federal official to exclude a person or business entity from participating in transactions involving certain federal funds.
  - f. "DSHS" or the "Department" means the state of Washington Department of Social and Health Services and its employees and authorized agents.
  - g. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.
  - h. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at <http://slc.leg.wa.gov/>.
  - i. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
  - j. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.
  - k. "Subrecipient" means a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a recipient of other federal awards directly from a federal awarding agency.
  - l. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at <http://slc.leg.wa.gov/>.
2. **Amendment.** This Agreement may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.

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3. **Assignment.** The Contractor shall not assign this Agreement or Program Agreement to a third party without the prior written consent of DSHS.
4. **Billing Limitations.**
  - a. DSHS shall pay the Contractor only for authorized services provided in accordance with this Contract.
  - b. DSHS shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.
  - c. The Contractor shall not bill and DSHS shall not pay for services performed under this Contract, if the Contractor has charged or will charge another agency of the state of Washington or any other party for the same services.
5. **Compliance with Applicable Law.** At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.
6. **Confidentiality.** The Contractor may use Personal Information and other information gained by reason of this Agreement only for the purpose of this Agreement. The Contractor shall not disclose, transfer, or sell any such information to any party, except as provided by law or, in the case of Personal Information, without the prior written consent of the person to whom the Personal Information pertains. The Contractor shall maintain the confidentiality of all Personal Information and other information gained by reason of this Agreement, and shall return or certify the destruction of such information if requested in writing by DSHS.
7. **Debarment Certification.** The Contractor, by signature to this contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions. The Contractor also agrees to include the above requirement in any and all subcontracts into which it enters.
8. **Governing Law and Venue.** This contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County. In the event that an action is removed to U.S. District Court, venue shall be in the Western District of Washington.
9. **Independent Contractor.** The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the Department. The Contractor, his or her employees, or agents performing under this contract will not hold himself/herself out as, nor claim to be, an officer or employee of the Department by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such employee.
10. **Inspection.** In addition to any rights of access or inspection that may be included in the Special Terms and Conditions, or in any Program Agreement, the Contractor shall provide reasonable access to the Contractor's place of business, Contractor records, and client records, to DSHS and to any authorized agent of the state of Washington or the federal government in order to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms during the term of this Contract and for one (1) year following termination or expiration of this Contract.

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- 11. Maintenance of Records.** The Contractor shall maintain records relating to this contract and the performance of the services described herein, including but not limited to accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. All records and other material relevant to this contract shall be retained for six (6) years after expiration or termination of this contract. At no additional cost, these records shall be subject at all reasonable times to inspection, review or audit by the department, personnel duly authorized by the department, the Office of the State Auditor, and any federal and state officials so authorized by law, regulation or agreement.
- If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
- 12. Order of Precedence.** In the event of any inconsistency or conflict between the General Terms and Conditions and the Special Terms and Conditions of this agreement or any Program Agreement, the inconsistency or conflict shall be resolved by giving precedence to these General Terms and Conditions.
- 13. Severability.** If any term or condition of this Contract is held invalid by any court, such invalidity shall not affect the validity of the other terms or conditions of this Contract.
- 14. Survivability.** The terms and conditions contained in this Agreement or any Program Agreement which, by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and Treatment of Property.
- 15. Termination Due to Change in Funding.** If the funds DSHS relied upon to establish this Agreement or Program Agreement are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, DSHS may immediately terminate this Agreement by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice.
- 16. Waiver.** Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the DSHS Chief Administrative Officer or designee has the authority to waive any term or condition of this Contract on behalf of DSHS.

### Additional General Terms and Conditions – Personal Service Contracts:

- 17. Advance Payment.** DSHS shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Contract.
- 18. HIPAA Compliance.**
- a. Definitions.
- (1) “Business Associate” means the “Contractor”, as used in this Contract and as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of the Covered Entity that involves the use or disclosure of client protected health information (PHI). Any reference to Business Associate in this Contract includes Business Associate’s employees, agents, officers, subcontractors, third party contractors, volunteers, or directors.

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- (2) "Covered Entity" means DSHS, a Covered Entity as defined in 45 CFR 160.103.
  - (3) "Designated Record Set" means a group of records maintained by or for a Covered Entity, that is: the medical and billing records about Individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or used in whole or part by or for the Covered Entity to make decisions about Individuals.
  - (4) "Electronic Protected Health Information (EPHI)" means protected health information that is transmitted by electronic media or maintained in any medium described in the definition of electronic media at 45 CFR 162.103.
  - (5) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USCA 1320d-d8.
  - (6) "Individual(s)" means the person(s) who is the subject of PHI and includes a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
  - (7) "Minimum Necessary" means the least amount of PHI necessary to accomplish the purpose for which the PHI is needed.
  - (8) "Protected Health Information (PHI)" means information created or received by Business Associate from or on behalf of Covered Entity that relates to the provision of health care to an Individual; the past, present, or future physical or mental health or condition of an Individual; or past, present, or future payment for provision of health care to an Individual. 45 CFR 160.103. PHI includes demographic information that identifies the Individual or about which there is reasonable basis to believe can be used to identify the Individual. 45 CFR 160.103. PHI is information transmitted or held in any form or medium. 45 CFR 160.103. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USCA 1232g(a)(4)(B)(iv).
  - (9) "Use" includes the sharing, employment, application, utilization, examination, analysis, canonization or commingling of PHI with other information.
- b. Compliance. Business Associate shall perform all Contract duties, activities and tasks in compliance with HIPAA and its attendant regulations as promulgated by the U.S. Department of Health and Human Services, the Center for Medicare and Medicaid Services, the Office of the Inspector General, and the Office of Civil Rights.
  - c. Use and Disclosure of PHI. Business Associate is limited to the following permitted and required uses or disclosures of DSHS client PHI:
    - (1) Duty to Protect DSHS Client PHI. Business Associate shall protect PHI from, and shall establish appropriate safeguards to prevent, the unauthorized disclosure of PHI in accordance with the terms and conditions of this Contract and state and federal law, including any regulations governing the security of PHI and the transmission, storage or maintenance of electronic data that contains PHI, for as long as the PHI is within its possession and control, even after the termination or expiration of this Contract.
    - (2) Return of DSHS Client PHI. Business Associate shall, within ten (10) working days of termination or expiration of this Contract, in accordance with Contract Termination and Expiration Procedures, and at the discretion of Covered Entity, either return or destroy all PHI,

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including PHI in possession of third parties under contract to Business Associate. If return or destruction is infeasible, Business Associate shall protect such PHI and limit its further use and disclosure to those purposes that make return or destruction infeasible for as long as the PHI is within the Business Associate's possession and control, even after the termination or expiration of this Contract.

- (3) Minimum Necessary Standard. Business Associate shall apply the HIPAA minimum necessary standard to any use or disclosure of DSHS client PHI necessary to achieve the purposes of this Contract. See, 45 CFR 164.514 (d)(2) through (d)(5).
- (4) Disclosure as Part of the Provision of Services. Business Associate shall only use or disclose DSHS client PHI as required to perform the services specified in this Contract or as required by law, and shall not use or disclose such PHI in any manner inconsistent with the use and disclosure restrictions placed on the Covered Entity by HIPAA.
- (5) Impermissible Use or Disclosure of DSHS client PHI. Business Associate shall report to DSHS in writing all uses or disclosures of PHI not provided for by this Contract within five (5) working days of becoming aware of the unauthorized use or disclosure of the PHI. Upon request by DSHS, Business Associate shall mitigate, to the extent practicable, any harmful effect resulting from the impermissible use or disclosure.
- (6) Failure to Cure. If DSHS learns of a pattern or practice of the Business Associate that constitutes a violation of the Business Associate's obligations under the terms of this Contract and reasonable steps by DSHS do not end the violation, DSHS shall terminate this Contract. If termination is not feasible, DSHS will report the problem to the Secretary of the federal Department of Health and Human Services (Secretary).
- (7) DSHS Notice of Requests for Disclosure. DSHS will notify Business Associate when DSHS client PHI is requested from DSHS that has been previously provided to Business Associate by DSHS. The parties will jointly determine whether Business Associate has received a duplicate request or if Business Associate has the original or sole copy of the PHI.
- (8) Consent to Audit. Business Associate shall give reasonable access to DSHS client PHI, records, books, documents, electronic data and/or all other business information received from, or created or received by Business Associate on behalf of DSHS, to the Secretary and/or to DSHS for use in determining DSHS' compliance with HIPAA privacy requirements.

### d. Individual Rights

#### (1) Accounting of Disclosures

- (a) Business Associate shall document all disclosures of DSHS client PHI and information related to such disclosures.
- (b) Within ten (10) working days of a request from DSHS, Business Associate shall make available to DSHS the information in Business Associate's possession that is necessary for DSHS to respond in a timely manner to a request for an accounting of disclosures of DSHS client PHI. See, 45 C.F.R. 164.504 and 164.528.
- (c) At the request of DSHS, Business Associate shall respond, in a timely manner and in accordance with HIPAA, to requests by Individuals for an accounting of disclosures of PHI.

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- (d) If any Individual asks Business Associate for an accounting of disclosures of DSHS client PHI, or for access to or amendment of PHI in a Designated Record Set, Business Associate shall within ten (10) working days forward the request to DSHS for response.
- (e) Business Associate's record keeping procedures shall be sufficient to respond to a request for an accounting under this section for the six (6) years prior to the date on which the accounting was requested except for disclosures that occurred prior to the HIPAA compliance date for the Covered Entity.

(2) Amendment. If DSHS amends, in whole or in part, a record or PHI contained in an Individual's Designated Record Set and DSHS has previously provided the PHI or record that is the subject of the amendment to Business Associate, then DSHS will inform Business Associate of the amendment pursuant to 45 CFR 164.526 (c)(3).

- e. Third Party Agreements. Business Associate shall enter into a written contract, that contains the same terms, restrictions, and conditions as the HIPAA Compliance provision in this Contract, with any agent, subcontractor, independent contractor, or other third party that has access to the DSHS client PHI accessible to Business Associate under the terms of this Contract.

### 19. Indemnification and Hold Harmless.

- a. The Contractor shall be responsible for and shall indemnify, defend, and hold DSHS harmless from all claims, loss, liability, damages, or fines arising out of or relating to a) the Contractor's or any Subcontractor's performance or failure to perform this Contract, or b) the acts or omissions of the Contractor or any Subcontractor.
- b. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

**20. Industrial Insurance Coverage.** The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

**21. Notice of Overpayment.** If the Contractor receives a vendor overpayment notice or a letter communicating the existence of an overpayment from DSHS, the Contractor may protest the overpayment determination by requesting an adjudicative proceeding. The Contractor's request for an adjudicative proceeding must:

- a. Be *received* by the Office of Financial Recovery (OFR) at Post Office Box 9501, Olympia, Washington 98507-9501, within twenty-eight (28) calendar days of service of the notice;
- b. Be sent by certified mail (return receipt) or other manner that proves OFR received the request;
- c. Include a statement as to why the Contractor thinks the notice is incorrect; and
- d. Include a copy of the overpayment notice.

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Timely and complete requests will be scheduled for a formal hearing by the Office of Administrative Hearings. The Contractor may be offered a pre-hearing or alternative dispute resolution conference in an attempt to resolve the overpayment dispute prior to the hearing.

Failure to provide OFR with a written request for a hearing within twenty-eight (28) days of service of a vendor overpayment notice or other overpayment letter will result in an overpayment debt against the Contractor. DSHS may charge the Contractor interest and any costs associated with the collection of this overpayment. DSHS may collect an overpayment debt through lien, foreclosure, seizure and sale of the Contractor's real or personal property; order to withhold and deliver; or any other collection action available to DSHS to satisfy the overpayment debt.

- 22. OFM Filing Requirement.** Under Chapter 39.29 RCW, certain Personal Service Contracts and amendments must be filed with the state of Washington Office of Financial Management (OFM). If this Contract must be filed, then it shall not be effective nor shall work commence or payment be made until reviewed or approved by OFM.
- 23. Ownership of Material.** Material created by the Contractor and paid for by DSHS as a part of this Contract shall be owned by DSHS and shall be "work made for hire" as defined by Title 17 USCA, Section 101. This material includes, but is not limited to: books; computer programs; documents; films; pamphlets; reports; sound reproductions; studies; surveys; tapes; and/or training materials. Material which the Contractor uses to perform the Contract but is not created for or paid for by DSHS is owned by the Contractor and is not "work made for hire"; however, DSHS shall have a perpetual license to use this material for DSHS internal purposes at no charge to DSHS, provided that such license shall be limited to the extent which the Contractor has a right to grant such a license.
- 24. Subcontracting.** Except as otherwise provided in this Contract, the Contractor shall not Subcontract any of the contracted services without the prior approval of DSHS as specified in a written amendment to this Contract. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. Any failure of Contractor or its Subcontractors to perform the obligations of this Contract shall not discharge the Contractor from its obligations hereunder or diminish DSHS' rights or remedies available under this Contract.
- 25. Termination for Convenience.** DSHS may terminate this Contract in whole or in part when it is in the best interest of DSHS by giving the Contractor at least thirty (30) calendar days' written notice.
- 26. Termination for Default.** The Contracts Administrator may immediately terminate this Contract for default, in whole or in part, by written notice to the Contractor if DSHS has a reasonable basis to believe that the Contractor has:
  - a. Failed to meet or maintain any requirement for contracting with DSHS;
  - b. Failed to protect the health or safety of any DSHS client pursuant to Section 9, Health and Safety, of this Contract;
  - c. Failed to perform under, or otherwise breached, any term or condition of this Contract; and/or
  - d. Violated any applicable law or regulation.
  - e. If it is later determined that the Contractor was not in default, the termination shall be considered a termination for convenience.



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- 27. Termination or Expiration Procedure.** The following terms and conditions apply upon Contract termination or expiration:
- a. The Contractor shall cease to perform any services required by this Contract as of the effective date of termination or expiration.
  - b. If the Contract is terminated, the Contractor shall comply with all instructions contained in the termination notice.
  - c. The Contractor shall immediately deliver to the DSHS contact named on page one of this Contract, or to his or her successor, all DSHS property in the Contractor's possession, including any "works for hire" as described in Section 17, Ownership of Material. The Contractor grants DSHS the right to enter upon the Contractor's premises for the sole purpose of recovering any DSHS property that the Contractor fails to return within ten (10) calendar days of the effective date of termination or expiration of this Contract. Upon failure to return DSHS property within ten (10) calendar days, the Contractor shall be charged with all reasonable costs of recovery, including transportation.
  - d. DSHS shall be liable only for payment required under the terms of this Contract for service rendered up to the effective date of termination or expiration.
  - e. DSHS may withhold a sum from the final payment to the Contractor that DSHS determines necessary to protect DSHS against loss or additional liability.
  - f. The rights and remedies provided to DSHS in this Section are in addition to any other rights and remedies provided at law, in equity, and/or under this Contract, including consequential and incidental damages.
- 28. Treatment of Property.** All property purchased or furnished by DSHS for use by the Contractor during this Contract term shall remain with DSHS. Title to all property purchased or furnished by the Contractor for which the Contractor is entitled to reimbursement by DSHS under this Contract shall pass to and vest in DSHS. The Contractor shall protect, maintain, and insure all DSHS property in its possession against loss or damage and shall return DSHS property to DSHS upon Contract termination or expiration.

**APPROVED AS TO FORM BY THE OFFICE OF THE ATTORNEY GENERAL**

## Special Terms and Conditions

1. **Definitions Specific to Special Terms.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
  - a. "\*\*\*" means \*\*.
2. **Purpose.** The purpose of this Contract is to:
3. **Statement of Work.** The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
4. **Consideration.** Total consideration payable to Contractor for satisfactory performance of the work under this Contract is up to a maximum of \$\_\_\_\_\_, including any and all expenses, and shall be based on the following:
5. **Billing and Payment.**
  - a. **Invoice System.** The Contractor shall submit invoices using State Form A-19 Invoice Voucher, or such other form as designated by DSHS. Consideration for services rendered shall be payable upon receipt of properly completed invoices which shall be submitted to \_\_\_\_\_ by the Contractor not more often than monthly. The invoices shall describe and document to DSHS' satisfaction a description of the work performed, activities accomplished, the progress of the project, and fees. The rates shall be in accordance with those set forth in Section 4, Consideration, of this Contract.
  - b. **Payment.** Payment shall be considered timely if made by DSHS within thirty (30) days after receipt and acceptance by \_\_\_\_\_ of the properly completed invoices. Payment shall be sent to the address designated by the Contractor on page one (1) of this Contract. DSHS may, at its sole discretion, withhold payment claimed by the Contractor for services rendered if Contractor fails to satisfactorily comply with any term or condition of this Contract.
6. **Insurance.**
7. **Disputes.**